Metis Settlements Appeal Tribunal

1999 Annual Report

MSAT

METIS SETTLEMENTS APPEAL TRIBUNAL

MESSAGE FROM THE TRIBUNAL CHAIRMAN

Last year was a busy, challenging and encouraging year for MSAT.

The creation of the MSAT Task Force provided a unique consultation process for settlement members and their governing bodies to have direct input to the potential changes of the Tribunal's role, jurisdictions, existing mandate and operation.

The Elders conference was a positive step for our leaders to seek advice and direction from our elders on the legislative and structural changes to the Metis Settlements governance structure and practices. Their wisdom, vision, knowledge and experience are valuable to the advancement of self-governance and a cultural base justice system.

In addition to the appeal and administrative activities reported in the 1999 annual report, MSAT was one of the sponsors at a national forum on Inter-Cultural Dispute Resolution: Opportunities and Issues, organized by the Faculty of Law, University of Alberta on July 8-10, 1999. MSAT made a presentation at the conference on the role of Tribunal and shared with the participants its experiences and successes as the first and only statutory body in Canada with a specific mandate to hear disputes arising within aboriginal communities.

We are aware of the many challenges and potential changes ahead of us in the years to come as we advance to the new millennium. I look forward to the challenge with enthusiasm, courage and perseverance.

I would like to thank my colleagues and staff for their hard work, commitment and dedication. Together we strive to continue the improvements and evolution required in our strategies, governance and operational management identified in our business plan.

Harry Supernault
Tribunal Chairman

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Mission

To contribute to the self-sufficiency of Metis life by providing resolution of issues that would affect the progress of Settlements and individuals. In providing this assistance, the Tribunal believes the following to be fundamental:

- The Tribunal's principal focus is to ensure that justice is dispensed using principles of law as a tool, not as an ultimate objective.
- Disputes are to be settled in an effective and timely way, with the least possible disruption of Metis life and relationships. To achieve this, alternative dispute resolution mechanisms are incorporated into Tribunal processes.
- Decisions of the Tribunal must be carried out using its own processes, supplemented by those of external agencies.
- Settlement Councils and members should be informed on the role of the Tribunal, so that appropriate issues can be brought to its attention clearly and without fear.

The Metis Settlements Appeal Tribunal

The Metis Settlements Appeal Tribunal was established in 1990 when the Metis Settlements Act was passed. Designed to provide practical and unbiased solutions to some of the day-to-day disputes facing the settlements, the Tribunal has jurisdiction to hear disputes about membership and land allocation decisions made by settlement councils.

The Tribunal also issues right of entry orders to oil and gas companies to access and determines related compensation. It can hear other disputes, if the parties involved agree or if the disputes were referred to the Tribunal by provincial legislation, General Council policies or settlement bylaws.

The Tribunal has completed its 1995/1998 business plan, with substantial implementation of many initiatives and objectives in that plan, including:

- Improved strategy and governance of the Metis Settlements Appeal Tribunal, through the development of rigorous training programs for new members.
- New communication devices, to inform settlement councils and members of the Tribunal's role and processes.

- Standardized quasi-judicial processes for investigation and hearings.
- Implementation of a peacemaking and culturally sensitive model on alternate dispute resolution.
- Development and implementation of performance standards for conduct of hearings.
- Implementation of a Tribunal Operations Manual, with clear statements of governance and administrative responsibilities, as well as documented expectations for Tribunal members and staff.

The Tribunal's 1999/2001 business plan strives to continue the improvements and evolution required in its strategies, governance and operational management.

1999/2001 Business Plan and Activities

The 1999/2001 business plan has two main sections: strategic management and operational management. The strategic management section identifies and develops a vision and a set of strategies and addresses the key areas of leadership, organizational structure, decision-making, control/accountability and communications for operational management of the Tribunal.

The MSAT Task Force

The Tribunal is the only statutory body in Canada with a specific mandate to hear disputes arising within Aboriginal communities.

The provincial government and Metis Settlements General Council felt it was time to take a fresh look at the Tribunal, to see if expanding its role could improve the governance framework of the settlements and thereby contribute further to the settlements' goal of becoming self-reliant, self-governing communities.

Hence the Metis Settlements Appeal Tribunal Task Force was established in February 1999, with members jointly appointed by the Minister of International and Intergovernmental Affairs and the Metis Settlements General Council. The Task Force was asked to submit its findings and recommendations within six months, funded through $95,000 allocated from the Tribunal's 1999 fiscal budget.

The Task Force was asked to:

- Examine the Tribunal's existing mandate and compare it with other Tribunals.
- Consult with settlement members, General Council, former and current Tribunal members on the Tribunal's role, jurisdiction and operation as well as issues which could be included in an expanded Tribunal mandate.
- Make recommendations regarding potential changes to the Tribunal's role, jurisdictions and operation.
- Identify legislative amendments necessary to implement Task Force recommendations.
- Identify necessary changes to the Tribunal's organizational structure.
- Make recommendations regarding remuneration of Tribunal members.
- Consider other relevant factors, as determined.

The Task Force's scope of responsibilities parallels the action plans already developed in the Tribunal's three-year business plan. Hence, the Tribunal has agreed not to proceed with its action plan implementation until the Task Force Review is complete.

The following are the principal recommendations of the Task Force.

Jurisdictional Issues

- Add a Tribunal statement of purpose to the Metis Settlements Act.
- Expand the Tribunal's jurisdiction to deal with settlement election issues, removal from office of settlement councillors and disputes between members.
- Establish an independent Office of Metis Settlements Conduct Advisor to investigate allegations of misconduct by settlement councils or councillors. These to include failure to establish and follow fair and open procedures, conflicts of interest or unethical conduct, and irregular, improper or improvident management, of mismanagement. The Conduct Advisor would be authorized to make a report to the Tribunal, or to other appropriate authorities.
- Clarify and strengthen MSAT procedures by permitting pre-hearing rules to be made by the Tribunal, including mandatory mediation, to permit fuller investigation of complaints.
- Give the Tribunal the capacity to sit as a joint panel with other boards or tribunals, when the need arises.
- Strengthen links with the court system, by authorizing the Tribunal to refer matters of law or jurisdiction to the courts. Designate MSAT as a 'friend of the court' for matters in the court to assist with advice on issues related to the settlements and their members.

Structural Issues

- Create a permanent, three-person Tribunal selection and review committee.
- Establish a new Tribunal structure, with a core group of three full-time members and staggered terms of office. Chair to have a six-year term. Members to have four-year terms. Appoint eight part time members, one each per settlement.
- Where specialized expertise is required, appoint additional Tribunal members by agreement of the Minister and General Council.
- Enable the Tribunal Chair to establish panels to hear cases, as required. Land Access Panel and Existing Leases Land Access Panel to remain as currently constituted.
- Establish rules for the removal of Tribunal members.
- Encourage Tribunal to use its authority to impose fees, require deposits and assess costs, as appropriate.

The Task Force Report and its recommendations were submitted to the Minister of International and Intergovernmental Relations and the President of the Metis Settlements

General Council on June 30, 1999. The Tribunal submitted its response to the Minister in September 1999.

Elders Conference

An Elders Conference was held September 8 to 10, 1999, jointly hosted by the Metis Settlements Appeal Tribunal, the Metis Settlements General Council and Alberta International and Intergovernmental Relations.

The purpose of the conference was to foster a unique consultation process with Elders for their advice and direction on potential legislative and structural changes to the Metis Settlements governance structures and practices.

In all, 134 Elders participated from the eight settlements, providing valuable comments to settlement leaders on the evolution of governance structures and the potential legislative changes. For more details, see Appendix at the back of this report.

Contemporary Metis Justice: The Settlement Way

On November 17, 1999 *Contemporary Metis Justice: The Settlement Way* was publicly launched, following a four year research partnership between the Tribunal and Catherine Bell, Faculty of Law, University of Alberta.

The objective of this research project was to gather in a comprehensive and accessible book format information that the Tribunal could use to respond to the needs of settlement members and others affected by Tribunal jurisdiction. Publication of Tribunal decisions also helps maintain accountability and open communication. This study of jurisdiction and decisions can also help the Tribunal in its efforts towards consistency and fairness in decision making.

Appeal Activities

Land, Membership and Other Appeals by Consent

The Tribunal received 28 new appeal cases in 1999. It issued 14 decisions. Three appeal cases were resolved successfully through mediation. The Tribunal ruled that five cases were either beyond its jurisdiction, or had no merit. Six cases were withdrawn and one case was resolved through conciliation. There were 31 outstanding appeal cases at the end of 1999.

	LAND, MEMBERSHIP AND OTHER APPEALS BY CONSENT						
Year	New appeals received	Cases resolved through mediation	Cases found to have no jurisdiction or no merit	Cases withdrawn or closed	Cases resolved through conciliation	Hearings held and orders issued	Outstanding files at year end
1997	36	0	6	3	5	7	21
1998	35	0	12	6	1	5	32
1999	28	3	5	6	1	14	31

Surface Rights Activities

The Land Access Panel issued 22 amendment and termination orders. The Existing Leases Land Access Panel issued one decision in 1999.

	SURFACE RIGHTS ACTIVITIES		
Year	Amendment and termination orders (Land Access Panel)	Ongoing Land Access Panel applications for amendments and terminations	Land Access Panel and Existing Leases Land Access Panel hearings held; orders issued
1997	12		5 (Land Access Panel)
1998	46		5 (Land Access Panel)
1999	22	65	1 (Existing Leases Land Access Panel)

Matters before Court of Appeal and Supreme Court of Canada

During this reporting period, the Tribunal had three decisions before the Court of Appeal. An application for Leave to Appeal to the Court of Appeal on an ELLAP decision regarding MSAT jurisdiction was denied and is now the subject of an application for leave to appeal to the Supreme Court of Canada.

Contact Reports

There were 81 contacts and follow up contacts that did not result in appeals. Isues raised included land transfers, land posting, housing and trailer selection, dower rights, spousal property, settlement benefits and services such as water, sewer, education funding, Bill C-31 and Indian Status, settlement elections, leaves of absence, private and employment disputes. There were more than 2,000 phone calls from members of the eight Metis settlements.

Financial Accountability and Human Resources Management

The Tribunal reports its activities on a calendar year basis, from January 1 to December 31. However, its financial reporting period follows the provincial government fiscal year from April to March of the following year.

The table below compares Tribunal expenditures for 1998/99 with those of 1997/98.

	1998/99		1997/98	
	Authorized Budget	Actual Expenditure	Authorized Budget	Actual Expenditure
Manpower	$315,000*	$268,000	$308,000	$215,000
Supplies & Services	650,000	716,000	650,000	664,000
Total	$965,000	$984,000	$958,000	$879,000

*Includes $7,000 achievement and performance bonus as part of the salary adjustment agreement for Alberta provincial government employees.

Administrative Activities

Staffing Model and Job Descriptions

- The Tribunal's administrative branch is currently being reviewed. Staff is in the process of updating their job descriptions. The staffing model will be further developed with the assistance of a human resources consultant from Alberta Learning. Target date for completion of the job descriptions is set for early 2000.

Refining Operations Manual

- Staff and Tribunal members are in the process of updating and refining the existing policy manual. Guidelines will be developed and implemented to ensure consistency in Tribunal policy statements.

Administrative Records Management

- Administrative Records Management will be completed and in full compliance with the Government Organization Act and Records Management Regulation in the new year. Staff will begin the implementation of the operational records management in the summer of 2000.

Appendix One

METIS SETTLEMENTS APPEAL TRIBUNAL (MSAT)
ORDERS ISSUED – January 1999 -December 1999

Order No. 88	Land Postings Randy Parenteau and Fishing Lake Metis Settlement Order issued: February 12, 1999
Order No. 89	Land Dispute Elaine Dame and Paddle Prairie Metis Settlement Order issued: April 21, 1999
Order No. 90	Damage to Land Craig Fischer and Paddle Prairie Metis Settlement Order issued: April 21, 1999
Order No. 91	Membership - Suzan Poitras Fiorella and Paddle Prairie Metis Settlement Order issued: April 21, 1999
Order No. 92	Land Dispute Archie Collins/Rose Marie Cunningham/Peavine Metis Settlement Order issued: April 29, 1999
Order No. 93	Membership - Laura Stevenson and Kikino Metis Settlement Order issued: June 1, 1999
Order No. 94	Land Transfer Dispute and Estate Matter Joey Whitford/Silas Cardinal/Kikino Metis Settlement Order issued: June 1, 1999
Order No. 95	Land Dispute - Gloria Anderson and Peavine Metis Settlement Order issued: August 18, 1999
Order No. 96	Land Dispute - Georgina Cunningham and Peavine Metis Settlement Order issued: August 18, 1999
Order No. 97	Land Dispute - Judy Stuart and Peavine Metis Settlement Order issued: August 18, 1999
Order No. 98	Land Dispute- Ivan Cunningham and Peavine Metis Settlement Order issued: August 18, 1999
Order No. 99	Land Dispute - John Dufresne/Randy Parenteau/Fishing Lake Metis Settlement Order issued: September 13, 1999
Order No. 100	Land Dispute - Adolf Klyne/Dennis Supernault/East Prairie Metis Settlement Order issued: September 27, 1999
Order No. 101	Provisional Metis Title Renewal Linda Desjarlais and East Prairie Metis Settlement Order issued: November 24, 1999

Appendix Two
1999 Elders Conference
Responses to MSAT Task Force Recommendations

At the 1999 Elders Conference held in Edmonton, members of the Metis Settlements Appeal Tribunal Review Task Force committee explained their recommendations for changes to the Tribunal. In small groups, Elders were then asked questions about proposed changes in jurisdiction, structure, procedure and other changes.

Jurisdiction

Elders were asked if the Tribunal's authority should be expanded. Suggested areas of jurisdiction that might be added and other comments are recorded here.

Area of jurisdiction	Comments
Election disputes (Currently, the Court of Queen's Bench decides election disputes.)	• All groups thought that the Tribunal should decide election disputes. • One group suggested that there should be an administration fee. • An Elder in one group thought that election disputes should go directly to the people, who should choose good leaders, not to the Tribunal.
Disqualification actions (The Metis Settlements Act says that a councillor is disqualified for wrongdoing, such as being convicted of a crime. Currently, if a disqualified councillor does not resign the Settlement Council or a Settlement member can apply to the Court of Queen's Bench to have the person removed.	• Most Elders thought that the Tribunal should have this jurisdiction, making members more comfortable and Councils more accountable. • Some Elders suggested a General Council policy that a person who has committed a serious offence should not be eligible to run for Council. • Some Elders suggested that conditions for the position of councillor and a requirement for disclosure be added to section 26 of the Act.

Disputes between members, without Council approval	• Most Elders thought that members should be able to bring disputes directly to the Tribunal without Council approval. • Some Elders suggested that members should approach Council first, and then the Tribunal. • One group suggested that it should only take one member to have the Tribunal deal with a dispute.

General comments

While most Elders supported expansion of the Tribunal's jurisdiction, some said that Councils should decide disputes on settlements, not the Tribunal.

Elders were asked if a new Conduct Advisor office should be created. This office would deal with allegations of misconduct, including failure to establish and follow fair and open procedures; conflict of interest; unethical conduct, and irregular or improper management of Settlement affairs, including financial mismanagement. The Conduct Advisor would investigate then make recommendations to the Tribunal, which would then decide whether to hold a full hearing.

Comments

Most Elders thought that this was a good idea. Some suggested that the Conduct Advisor also have the power to investigate nominees before elections. Some said that people should still have the option to go to court.

Some Elders did not want this, saying instead that members should just elect good councillors.

Some Elders thought that these matters should go to Court, not to the Tribunal because "sometimes it seems like the Tribunal and Councils are together."

Structure

Should the Tribunal have three full time members instead of seven?

(Note: The Chair would have a six-year term, and the other two full time members would have four-year terms.)

Most Elders agreed with the change, but some said to keep it the way it is. Others suggested seven full time members elected for staggered four-year terms, with appointments every two years. One group said they would agree to only three full time members, if no new powers were given to the Tribunal.

Should the Tribunal add eight part-time members (one from each settlement) to serve as needed for a four-year term and be paid honoraria and expenses for their services?

Many Elders thought this a good idea. Some said it would be good to have a member from each settlement, because that person could help their settlement. Some Elders had different opinions, as follows:

- It is not important to have one from each settlement, especially since members would not be able to decide disputes from their own settlement because of conflict of interest. These Elders like things as they are.

- One group suggested that if the Tribunal's jurisdiction is expanded, part-time panels might not be efficient.

- Some said that if Tribunal members are part time, they could be in conflict with other employment.

Should there be a permanent Selection and Review Committee that would select members of the Tribunal, review the performance of its members (based on criteria set by General Council and the Minister) and remove members who fail to meet these criteria?

(Note: This would be a standing three person committee, with one member appointed by General Council, one by the Minister and the third jointly appointed.)

Most Elders thought that this a good idea, adding that it is important for the panel selecting Tribunal members to be neutral. Some thought that having a committee would get rid of favouritism. Other Elders opposed the committee idea, preferring to have the Tribunal appointment process remain as is.

Should there be links between MSAT and other courts so that MSAT can give the courts advice?

Most Elders supported this. Some said it might help prevent clashes between the Tribunal and the courts.

Procedure

Should the Tribunal be able to make mediation mandatory?

Most Elders said yes. Some suggested the Tribunal should have Elders to help with this process. One group said that mediation should be mandatory, but there should be extra time to resolve the dispute.

(Note: Many groups did not get to this question.)

Should the Tribunal develop a policy for payment of filing fees, costs or other deposits?

Elders had different opinions about this. Many supported having fees, but others opposed. Some said there should be a deposit, refunded if the appeal was heard. Others said there should be fees or deposits and a policy with flexibility for hardship cases, so that everyone can use the process.

(Note: Many groups did not get to this question.)

Other Matters

Should the Tribunal continue its efforts to educate settlement members about its function and purpose?

Most Elders said yes. One Elder suggested a "shadow program". Some said communication is lax, both among members and Councils. Some suggested that local radio could be used, and said that the *Metis Messenger* helps.

(Note: Many Elders did not get to this question.)

Should General Council and the Minister establish a joint task force to look at long-term housing problems and develop recommendations for solutions?

Most Elders said yes. Many said that the federal government should be involved in a joint task force on housing. Some Elders said that the Tribunal should have jurisdiction over housing issues.

Some Elders suggested that all eight Settlements should develop policy on housing considerations, taking into account the stability of the individual, couples

(Note: Many Elders did not get to this question.)

Should another review of Tribunal operations and jurisdiction be done in five years?

Most Elders said yes. Some thought that another Tribunal review should be done after three years. One group thought it should be every year.

Comments about the Task Force meetings

There should have been more meetings with the people and the Task Force. Some Elders said there was a lack of communication; settlement members and administrative staff did not know the time and place of meetings. Some said that there should be more meetings about the tribunal. Some said the Task Force should seek a long consultation process.

Suggestions made by elders on how to get people out for important meetings

- Make them supper.
- Phone them to remind them of the meeting.
- Use mass media, local radio.
- Invite them by letter.

A number of Elders said that there should be better communication with people who cannot come out to meetings. One said: "If they don't come out, go and visit each home, if it is important. Send one person to each home, or put a questionnaire together and a local person can do a home visit to get answers."

Some Elders said that people are not attending meetings out of frustration. Issues brought to Council are not dealt with, and the executive tells members to take them up with Council. Elders noted that councillors sometimes don't attend workshops or meetings.

Comments on the Tribunal and self-regulation in general

- Many Elders said the Tribunal is doing a good job. One group said it was "generally satisfied" with the Tribunal and that it "should have more power."
- There should be an Elders Advisory Committee for the Tribunal and Elders should be officially recognized somehow in the legislation.
- The Tribunal should get more involved in other problems and disputes, as suggested.
- "All members should be given information about MSAT."
- They should be in the settlement on weekly visits.
- Elders should sit on the Tribunal.